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**SFX Target Center Arena Management, LLC and
International Alliance of Theatrical Stage Em-
ployees Local 13.** Case 18-CA-15930-1

July 30, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On April 9, 2002, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,¹ findings, and conclusions² and to adopt the recommended Order.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, SFX Target Center Arena Management, LLC, Minneapolis, Minnesota, its officers,

¹ The General Counsel concedes in its answering brief that SFX was not a "perfectly clear" successor, as found by the administrative law judge. In any event, we find it unnecessary to pass on this finding.

² The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

³ Members Schaumber and Meisburg observe that it is Federal labor policy to reduce legal barriers to the disposition of business assets of employing entities, in order to encourage commerce and investment. To that end, a successor employer is generally permitted to set new initial terms and conditions of employment. Here, if the Respondent wished to increase its flexibility regarding the performance of certain bargaining unit work by third parties such as contractors, it could have set new initial terms and conditions permitting this. However, the Respondent did not simply set new initial terms and conditions; instead it unilaterally determined that the incumbent union would no longer have the right to bargain on behalf of certain categories of bargaining unit employees. This the Respondent could not lawfully do.

agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. July 30, 2004

Peter C. Schaumber, Member

Dennis P. Walsh, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Joseph H. Bornong, for the General Counsel.

Andrew M. Herzig (*Akin, Gump, Strauss, Hauer & Feld, L.L.P.*), of New York, New York, for the Respondent.

Matt Rice, of Minneapolis, Minnesota, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard his case in Minneapolis, Minnesota, on October 2, 2001. On June 27, 2001, the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing, based upon an unfair labor practice charge filed on March 7, 2001, and amended on June 6, 2001, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record, upon the briefs that were filed, and upon my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

This somewhat unusual situation presents, at root, a unit issue in an alleged successor-employer context. It arose at a public arena where, over the course of each calendar year, various relatively short-term events are staged and presented for public consumption. In connection with each event employees, referred to herein as stagehands, must assemble, operate, dismantle and rig whatever facilities and equipment are necessary for each event to be staged and presented. As must be obvious, those employees do not work day-by-day, week-by-week at the arena. Instead, they work there only whenever events are scheduled for performance and only from initiation of assembly through completion of disassembly. Therefore, stagehand work at the arena is essentially irregular and part time.

As a general proposition, the threshold question presented is whether or not a new employer of those stagehands, working

periodically at that arena, is a successor-employer, within the meaning of the Act, to predecessor-employers who had employed stagehands during the period when each of them had been responsible for management of events staged and presented at the arena. The next question is whether or not that new employer was free to unilaterally delete from a historical bargaining unit, in which stagehands had been represented by an exclusive collective-bargaining representative, within the meaning of Section 9 of the Act, certain categories that had been included in the historical unit, thereby excluding employees in those categories from representation and from coverage under any collective-bargaining contract negotiated between their exclusive representative and the new employer.

The facts are not disputed in any significant respect. Given the setting underlying the complaint's allegations, and the arguments for and against violation of the Act, however, a somewhat prolonged, and sometimes tedious, description of those facts is required. Based upon those facts, and the principles applied to them under the Act, I conclude that a preponderance of the evidence establishes that there was a successor-employer who did voluntarily recognize the stagehands' exclusive representative, seemingly because it was perfectly clear that a majority of the predecessors' stagehands would be employed at the public arena. However, that successor-employer chose to extend recognition only for most, but not all, of the historical bargaining unit. In short, the successor-employer unilaterally eliminated from the historical unit some categories represented historically by the now-incumbent bargaining agent. Justifications were advanced for pursuing that course. As concluded in section II, *infra*, however, I conclude that those justifications do not suffice to overcome the unlawful unilateral modification of the historical bargaining unit made by the successor-employer. Therefore, I conclude that the evidence establishes a violation of Section 8(a)(5) and (1) of the Act.

B. Operations at Target Center Arena

The complaint's allegations arise from events involving Target Center Arena, an indoor arena located in Minneapolis. It opened in 1990. At all times then, and since then, the arena has been owned by Minneapolis Community Development Agency. Various types of publicly attended events have been staged and presented there: professional basketball and hockey, wrestling matches, ice shows and circuses, concerts, political rallies, family shows, and graduations. So far as the record discloses, the arena is dark between events.

Various types of employees are needed to stage and present those events: maintenance and custodial employees, box-office ticket-sellers, ticket-takers and ushers, changeover employees and employees who set up and dismantle facilities and equipment needed to stage and present each particular event, and employees who operate equipment—sound, lighting, projectors—during events. So far as the evidence discloses, none of those employees work at Target Center Arena between events. Moreover, none of them have ever been employed by Minneapolis Community Development Agency, the arena's owner.

For staging and production of events, and for operations in conjunction with those events, Minneapolis Community Development Agency has always contracted with privately owned

firms. From the arena's 1990 opening until June 2, 2000,¹ there were separate contracts with Ogden Entertainment Services, Inc. (Ogden Entertainment) and Ogden Concessions. Apparently, there was, or still may be, some relationship between those two firms. But, the record is not clear regarding the exact relationship. In any event, whatever that relationship may be, it is not significant for resolution of issues presented in this proceeding. The significant point is that Ogden Concessions handled the food and beverage concessions at Target Center Arena, employing only the food and beverage employees.

All other employees at that arena were employed from 1990 to mid-2000 by Ogden Entertainment. Pursuant to management contract with Minneapolis Community Development Agency, it served as manager for events conducted at Target Center Arena. That is, Ogden Entertainment scheduled events, arranged for employment of personnel needed to stage and produce them, and oversaw installation, operation, and dismantling of facilities and equipment in connection with each event.

Both Ogden companies were replaced by two separate Aramark firms on June 2. Again, the exact relationship between those two companies was left undeveloped in the record. But, again, whatever the exact relationship, it is not significant for resolution of issues presented in this proceeding. One Aramark firm replaced Ogden Concessions in handling food and beverage concessions. The other, Aramark Entertainment, replaced Ogden Entertainment as manager for Target Center Arena events. It is undisputed that Aramark Entertainment performed the same role in that respect as had Ogden Entertainment.

The Aramark firm responsible for food and beverage concessions was continuing to do so as of the date of the hearing in the instant proceeding. In contrast, Aramark Entertainment experienced a quite short-term duration as arena manager. On September 21, slightly over three months after becoming arena manager, it was replaced by Respondent, SFX Target Center Arena Management, LLC. It is part of a national entertainment company conducting operations throughout the United States. More specifically, at all material times Respondent has been a Delaware Corporation, with an office and place of business in Minneapolis. It admits that since September 21 it has been engaged in providing services, equipment and materials involved in production of entertainment events, such as concerts and sporting events, at Target Center Arena. Furthermore, in conducting those business operations during the latter part of calendar year 2000, Respondent admittedly earned gross revenues in excess of \$1 million and, further, admittedly sold goods and services valued in excess of \$50,000 directly to customers located outside of the State of Minnesota. Therefore, at all material times, as it admits, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Under its management contract with Minneapolis Community Development Agency, Respondent acknowledges that it plays the same manager's role, for staging and presenting events at Target Center Arena, as had Aramark Entertainment and, before it, Ogden Entertainment. That is, Respondent

¹ Unless stated otherwise, all dates occurred during 2000.

serves as manager for the same facility—Target Center Arena—as did Aramark Entertainment and, before it, Ogden Entertainment. It schedules the same types of events—basketball and hockey games, wrestling matches, ice shows and circuses, concerts, etc.—as had Aramark Entertainment and, before it, Ogden Entertainment. It employs the same types of employees—maintenance and custodial employees, box-office personnel, ushers and ticket-takers, employees who install, rig, operate, and dismantle facilities and equipment for events—as had Aramark Entertainment and, before it, Ogden Entertainment.

Furthermore, each of those three firms employed, as its assistant executive director of operations, Jack Larson. Until he left Respondent approximately a month before the hearing in the instant matter, to become vice president of operations for Minnesota Hockey Ventures Group, Larson had served as day-to-day manager successively for Ogden Entertainment, Aramark Entertainment and Respondent. Respondent admits that at all material times, at least from September 21, 2000, until sometime in September 2001, Larson had been a statutory supervisor and its agent.

C. History of Bargaining Relationships

Under Ogden Concessions and, then, Aramark the food and beverage concession employees have been represented, seemingly continuously, by a labor organization identified during the hearing as Hotel and Restaurant Employees Local 17. In like vein, maintenance techs and custodial crew, changeover crew, and ushers and ticket-takers have been represented, seemingly continuously, by a labor organization identified during the hearing only as Teamsters. A third group of employees—suite attendants, box-office ticket-sellers, and security guards—has been, apparently continuously, unrepresented by any labor organization since the arena's 1990 opening. So far as the record shows, historically those three groups of employees have been dealt with separately from the group of employees at issue in this proceeding. That is, regardless of by whom employed over time, so far as the evidence shows, none of the employees in any of those three groups have been represented in the historical bargaining unit of employees, described below, at issue in this proceeding. Their representation or lack of representation, respectively, has not been shown to have any effect on the separate identity of employees at issue in this proceeding.

From 1990 the employees at issue have been represented by the Union, International Alliance of Theatrical Stage Employees Local 13, a labor organization within the meaning of Section 2(5) of the Act. The Union and Ogden Entertainment entered into a collective-bargaining contract for a stated effective period of “the first day of October, 1990 to the 31st day of July, 1993, and from year to year thereafter unless and until either party gives to the other party a written notice sixty (60) days prior to July 31st, 1993 or any subsequent calendar year of a desire to amend, modify or terminate this agreement.” Article I, section 1.01 of that contract sets forth the bargaining unit in which the Union was recognized as the exclusive collective-bargaining agent:

[E]mployees that perform the functions customarily within the jurisdiction of the Union, including, by way of illustration

but not limitation, the installation, operation, dismantling and rigging of temporary and permanent sound equipment, lighting equipment, band gear, projection screens, projection equipment, videotape equipment and any related audio/visual equipment, temporary staging, properties, scenery, drops and drapery; fork-lift operation; wardrobe; the loading and unloading of trucks carrying equipment described in this Section 1.01 and various other duties incidental or related to the preparation or rendition of events, *including the carrying of television lighting equipment and installation of such equipment.* [Emphasis added.]

As will be seen, the underscored portions of that bargaining unit have been brought into issue by Respondent's actions and the allegations concerning them. The italicized portion is significant only in connection with an arbitration decision, discussed below.

Before moving to description of what occurred during September, several aspects of the bargaining history—between the Union and Ogden Entertainment and then, briefly, between the Union and Aramark Entertainment—must be described.

First, as the unit description indicates, the work covered by the bargaining unit encompasses bringing facilities and equipment for an event into the arena, installing it, operating whatever equipment necessary during the event, dismantling facilities and equipment following an event, and storing or, alternatively, loading them onto trucks for transportation to the event's next location, depending on the type of event—basketball game versus circus, for example—being staged and presented.

Under the first of the two underscored portions of the above-quoted bargaining unit, included in the unit were employees who installed, rigged, operated, and dismantled large projection screens, now so common in indoor arenas and outdoor stadiums and ballparks, and equipment relating to them. For example, at athletic events, those screens are utilized to display replays and, perhaps, to simultaneously display the ongoing flow of play. For concerts, and probably other events occurring on a stage, those screens are utilized to display the ongoing performance, thereby enhancing ability of less-favorably-situated audience members to see what is occurring on stage. The work involved in connection with those screens involves bringing the equipment, such as cameras and screens, into the arena from storage areas or unloading it from trucks, depending on the type of event, installing it where it needs to be placed in the arena, setting it up for operation, connecting the cables and whatever else is necessary for operation, and, at event's conclusion, disassembling and restoring or reloading all of that equipment.

Second, during 1990 and thereafter, various restrictions were placed on the scope of work performed by unit employees. For example, article I, section 1.01 of the above-mentioned 1990–1993 contract provided, “This Agreement shall not apply to the computerized in-house lighting system.” Moreover, as operations progressed under that contract's term, a dispute arose concerning a Nordstrom's commercial produced at Target Center Arena. It would lead to an addition in the succeeding collective-bargaining contract between the Union and Ogden Entertainment.

For that commercial, installation, operation, dismantling work was performed by employees of the contractor producing the commercial, as opposed to employees retained by Ogden Entertainment. That contractor had not been producing the commercial for Target Center Arena, nor for Ogden Entertainment. Rather, the arena was no more than the site for producing a commercial pursuant to contract with the Minnesota Timberwolves of the National Basketball Association, the arena's primary tenant. Thus, Ogden took the position that it was not the employer of the employees performing the disputed work and, accordingly, article I, section 1.01 of the collective-bargaining contract was inapplicable. Eventually, that type of dispute was resolved through collective bargaining.

Despite its stated 1990–1993 term, the initial contract provided for year-to-year renewal, under the terms quoted above. Apparently it was allowed to renew automatically until 1997, when the Union and Ogden Entertainment negotiated the only other contract produced during the hearing. At least, former Assistant Executive Director of Operations Larson referred to that later contract as “the second contract,” and it has a stated term of “the 3rd day of March, 1997 to the 2nd day of March 2000,” with automatic renewal provided as in the 1990–1993 contract.

The language of article I, section 1.01 in the 1997–2000 contract is identical to the above-quoted language in that same article and section of the 1990–1993 contract. However, added to article I of that “second contract,” testified Larson, was section 1.05, intended to resolve the Nordstrom’s-type of dispute. section 1.05 states:

The provisions of Sections 1.01, 1.011 and 1.02 notwithstanding, customers and users of the Target Center, including their employees and contractors, may load, unload, move in, install, operate and take out video recording equipment and other visual recording equipment and accompanying portable lighting equipment for purposes of shooting a commercial.

In the end, however, that addition did not eliminate disputes over application of article I, section 1.01 to stagehands’ work being performed at Target Center Arena.

Third, “in 1998,” Larson testified, a McDonald’s commercial was being produced at Target Center Arena, apparently pursuant to agreement with a customer or user of the arena. The Union voiced, he further testified, “[a] similar claim that they should be doing the setup and take down work of,” in this instance, “the lighting equipment,” and, possibly also, cables and connections for equipment. “I can’t remember exactly how it ended up,” testified Larson, but “we didn’t get a final answer on that.” There is no evidence that the McDonald’s dispute ever proceeded to arbitration. However, that did occur when the World Figure Skating Championships (WFSC) were performed at Target Center Arena from March 22 through April 5, 1998.

In connection with that performance, several issues were eventually presented for arbitration. Only one involved actual interpretation of the 1997–2000 contract’s article I, section 1.01 which, as pointed out two paragraphs above, repeats the bargaining unit description of the 1990–1993 contract’s same article and section. A second issue did not involve interpretation

of that article and section. Yet, its resolution does provide some insight regarding how carefully one must approach interpretation of the stagehands’ work at Target Center Arena.

That second arbitration issue centered on upgrading the arena’s power supply, by laying electrical power feeder cable from a temporary power generator, supplied by Ogden Entertainment and located outside of the arena, to a power disconnect on a catwalk within the arena. Ogden Entertainment had assigned that work to two of its employees represented by Teamsters and to outside contractor Ziegler and Design Group (Ziegler). Ziegler used two of its own employees and two persons for whose services Ziegler had contracted. The Union did not contend that the work was literally encompassed by article I, section 1.01, but argued that employees it represented had customarily performed that work.

Arbitrator Laura Cooper decided against the Union on that point. In the process, she made several points that show how finely distinctions can be drawn in this industry when resolving disputes about work performed by stagehands at Target Center Arena. Thus, she pointed to distinctions between “the pulling of *lighting* cable and . . . the pulling of *electrical* cable”; between “the running of power cable from an outside generator . . . [and] the running of cable from a disconnect to lights or sound”; between “electrical or power cable, and, if power cable, whether it was cable from an outside generator”; and, between “pull[ing] cable from an outside generator supplied by Ogden, rather than one supplied by a [musical or wrestling] show.” Indeed, the arbitrator pointed out, Ogden Enterprises acknowledged that the Union’s contractual unit embraced “pulling electrical cable from a generator supplied by a musical or other act,” and, in addition, “the running of cable from a disconnect to lights or sound, work [Ogden Entertainment] agrees is within the Union’s jurisdiction,” though not the subject of the grievance she was addressing. These distinctions and Ogden Entertainment’s acknowledgements serve as some warning to those not conversant with the details of this industry that care must be exercised when evaluating disputes which arise. Over-generalized interpretations of the contractual bargaining unit need to be avoided.

The article I, section 1.01 determination which the arbitrator did make is pertinent to this proceeding, not only because it involves an interpretation of the contractual provision which Respondent changed, but also because the arbitrator’s resolution is advanced by Respondent as partial justification for having made that change. At issue was ABC-TV employed and hired personnel who, states the arbitrator, “performed television support work for the [WFSC], including the handling of television equipment and cabling, including the loading, unloading and installation of television equipment, cameras and monitors and laying and pulling of television cables connecting such equipment.” It should be noted that this situation differs from the above-described one involving Nordstrom’s and McDonald’s.

Those were situations where Target Center Arena was no more than a site being utilized for producing commercials to be shown elsewhere. No audience was present in the arena. WFSC was an actual event being performed in Target Center Arena. Audiences had paid and were present in the arena for

WFSC performances. Not only were those performances seemingly being shown on the large screens within the arena, to the audiences present for performances, but those performances were also being televised to audiences outside the arena. As the arbitrator stated, “The question is whether the Union’s jurisdiction includes handling equipment for broadcast as well as for internal video.”

The Union based its claim to this work squarely on article I, section 1.01 of the 1997–2000 contract. It argued that the work being performed by ABC-TV employees and hirees was encompassed by “the installation, operation, dismantling and rigging of . . . projector screens, projection equipment, videotape equipment and any related audio/visual equipment” portion of that article and section. In the end, however, the arbitrator did not interpret, or even attempt to interpret, that portion of article I, section 1.01.

Instead, she looked to “the carrying of television lighting equipment and installation of such equipment” portion of article I, section 1.01—the italicized portion at the end of the above-quoted contractual bargaining unit. That language, Arbitrator Cooper concluded, qualified through “the specific term ‘television’ . . . the more general terms ‘videotape’ and ‘audio/visual,’ suggesting [the parties] were seeking to draw a distinction between the two categories of work.” For, she continued, “there would be no need specifically to reference *television lighting* if television lighting were already included in the more general reference earlier in” section 1.01 to “lighting equipment.” In short, “the parties understood the Union’s jurisdiction over television equipment to be limited to lighting equipment,” leaving other television-related projection, videotape, etc., work outside the contractual bargaining unit. “I therefore find that the explicit language of Section 1.01 does not grant the Union jurisdiction over television support work other than the handling of television lighting equipment,” Arbitrator Cooper concluded. Even as to that work, however, her conclusion was not absolute.

Both in connection with upgrading the arena’s power supply and the handling of television equipment and cabling used in connection with televising WFSC, she stated that the Union argued that it had “performed television support work (other than lighting) for . . . three WCW Monday Night Nitro TNT professional wrestling events.” (Footnote omitted.) Because those wrestling events had all occurred after WFSC, the arbitrator concluded that “they cannot define what was customary at the time of the WFSC.” Nonetheless, the fact that union-represented employees had done that work is some indication that stagehands whom it represented were not excluded, in practice, from doing at least some “television support work other than the handling of television lighting equipment.” No clear demarcation line is revealed by the evidence presented during this proceeding.

Furthermore, Arbitrator Cooper also pointed out that Ogden Entertainment did “not dispute that pulling electrical cable from a generator supplied by a musical or other act is within the Union’s jurisdiction, as was the case in the wrestling events.” (Footnote omitted.) In addition, she noted that “the running of cable from a disconnect to lights or sound” was work that Ogden Entertainment acknowledged to be embraced by the

historical bargaining unit. All else aside, these portions of her decision show that determinations regarding the historic stagehand bargaining unit are ones that should be approached with a scalpel, rather than a meataxe.

Fourth, as must be apparent from what has already been said, the need for stagehands at Target Center Arena was not an ongoing, daily one; need arose only whenever an event was to be staged and presented there. Moreover, numbers of stagehands needed varies from event to event. Less would be needed for a graduation, for example, than for an ice show or circus. “They’ll vary from one or two up to 130,” testified stagehand and Union Business Agent Matt Rice. Nevertheless, there seems to have been a certain continuity in identities of stagehands who worked at Target Center Arena for Ogden Entertainment and, then, Aramark Entertainment.

Article I, section 1.02 of both the 1990–1993 and 1997–2000 collective-bargaining contracts provided that, “Whenever the Employer needs employees to perform any work as outlined in Section 1.01, the Union shall exclusively furnish such employees.” Of course, only Ogden Entertainment had been an employer-party to those contracts. However, it is undisputed that, during its brief 3-month tenure as arena manager, Aramark Entertainment had followed the provisions of the 1997–2000 contract, including, so far as the record shows, the hiring hall provisions of section 1.02. In consequence, for over a decade there had been a common source of stagehands for work performed at Target Center Arena, though their numbers varied from event to event staged and presented there, as might the types of skills needed for different types of events. Nevertheless, there likely was an ongoing identity of many of the stagehands working there from event to event.

According to Rice, there were approximately 1400 persons registered on the Union’s referral or dispatch list. From that pool, the Union dispatched stagehands in response to requests made by Ogden Entertainment and, then briefly, to Aramark Entertainment, as well as to other employers with whom the Union has collective-bargaining contracts: at Excel Center, Orchestra Hall, State and Orpheum Theaters, for example. Of course, were the Union to exhaust the referral list before again dispatching a once-dispatched stagehand, then there would be a variance in identities of stagehands dispatched over the course of a year’s events at Target Center Arena. However, exhaustion of the list is not the Union’s practice.

No one disputed Rice’s testimony that “we don’t rotate all the way through, we just—each event you start over at the top of the list,” when referring stagehands for calls. Thus, subject to events elsewhere and individual skills, the same stagehands were being dispatched to Ogden Entertainment and, then, to Aramark Entertainment prior to September 21. Even as to variances in individual stagehands’ skills, moreover, those possessing the same skills likely were dispatched regularly to Target Center Arena whenever their particular skills were required in connection with events being staged and presented at the arena. That would follow from the Union’s start-at-the-top procedure followed for each dispatch-request. Even so, there is one caveat, based upon what has already been said, that must be considered in connection with that start-at-the-top dispatch procedure.

The Union is party to 14 collective-bargaining contracts. Apparently, it is the exclusive source of stagehands under each, or at least most, of those contracts. Thus, over the course of any calendar year, it would be dispatching stagehands to more than one site, whenever events are being staged and presented at more than one location where the Union has a contract covering stagehands. In those situations, testified Rice, if particular stagehands were already working at one of those sites, “and a show comes in from the Target Center we skip over those people. We don’t move them out of another job.” Given that fact, there is at least an inherent potential for variance among identities of stagehands working at Target Center Arena over the course of a calendar year, depending on the number of differing events being staged and presented at various sites covered by the Union’s collective-bargaining contracts with employers of stagehands at those sites.

Yet, there has been no showing that, over the course of time, there had been a significant number of situations where a call was made for Target Center Arena at a time when union-dispatched stagehands, who ordinarily were dispatched to that arena, were already working at other sites covered by one or more of the Union’s collective-bargaining contracts. Common sense dictates that there must have been at least some such situations. But, there is no showing that they are significant in number. And there is no showing that, whenever that had occurred, stagehands dispatched to Target Center Arena had not been ones who had worked there before, in response to prior calls. In fact, no one contested Rice’s estimate that, for Target Center Arena, “probably the first 100 people [on the referral list] would be repeat employees.” As a result, over time, there had been a relatively high identity of stagehands dispatched to the arena, in response to calls placed with the Union by Ogden Entertainment and, then briefly, by Aramark Entertainment, though some variances in numbers and identities takes place event-by-event over the course of any calendar year.

D. Respondent Becomes Manager for Target Center Arena

On September 21 Respondent succeeded Aramark Entertainment as manager of Target Center Arena. As such, it was manager of same arena at the same location as had been Aramark Entertainment and, before it, Ogden Entertainment. Its work involved the same types of events—basketball and hockey games, wrestling matches, concerts, etc.—as had been the fact when the arena manager had been Aramark Entertainment and, before it, Ogden Entertainment. The arena’s customers—whether viewed as the public attending events at the arena or, alternatively, the producers of events being staged and presented there—were of the same type as when the arena had been managed by Aramark Entertainment and, before it, Ogden Entertainment. It hired, and for almost the entire first year employed, as its day-to-day manager, Jack Larson, assistant executive director of operations, as had occupied that position for Aramark Entertainment and, before it, for Ogden Entertainment.

Even before becoming the arena’s manager, Respondent had obviously given thought to how it intended to conduct operations. By letter to Rice, dated September 18, Respondent gave

notice that it had “entered into a contract to assume the management of the Target Center on September 21, 2000.” The letter continues by stating that Respondent “will need to hire personnel to perform stagehand work at the arena, and it is interested in negotiating a collective bargaining agreement with your union. We will consider and respond to any contract proposals that you offer. In the meantime, we will continue to look to your organization for stagehands to perform work at the Target Center.” Inasmuch as Respondent offers to negotiate a collective-bargaining agreement and invites proposals from the Union, its September 18 letter essentially recognizes the Union as the bargaining agent for stagehands whom it would be employing at Target Center Arena. Respondent does not contend to the contrary.

That probably is not a particularly surprising course—voluntary recognition—for Respondent to have followed, given the circumstances of employing stagehands in the Twin Cities area. So far as the evidence shows, Respondent, though a national entertainment company, as pointed out in subsection B above, was apparently not prepared to portage stagehands from other locations to Target Center Arena each time that an event was to be staged and presented there. Indeed, given the relatively short duration of each event, such a course would have been impractical, at least so far as the record shows. Further, there is no evidence that any pool of local stagehands existed, other than ones registered with the Union, from which Respondent could draw to supply its need for stagehands in connection with staging and presenting events at Target Center Arena. Thus, while its September 18 letter states that Respondent “will hire and utilize such stagehands [dispatched by the Union from its referral list] only when [Respondent] decides that it is necessary,” there is no evidence sufficient to infer that Respondent had contemplated obtaining any significant number of stagehands, for the arena’s events after September 21, from sources other than the Union’s referral list.

The September 21 letter continues by stating that it “sets forth the terms and conditions of employment under which [Respondent] will hire such stagehands,” but adds that stagehands’ “work will be performed under the terms and conditions of employment set forth in the Union’s expired collective bargaining agreement with Ogden, as clarified by this letter.” That said, however, Respondent did announce some changes in its September 18 letter—changes that allegedly narrowed the scope and composition of the historical bargaining unit, as set forth in the 1990–1993 and 1997–2000 collective-bargaining contracts:

The Company intends to hire such stagehands to perform the following work: (1) the installation, operation, dismantling and rigging of temporary and permanent sound equipment, lighting equipment, band gear, temporary staging, properties, scenery, drops, and drapery; (2) fork-lift operations; (3) the loading of trucks carrying equipment described in this paragraph; and (4) other duties incidental or related to the preparation or rendition of events, including the carrying of television lighting equipment and installation of such equipment.

Larson denied expressly that it had been Respondent’s intention to take any projection screen work away from Union-

represented stagehands. Nevertheless, asked if the September 18 letter made “changes . . . to what had been the recognition clause under the expired Ogden agreement,” Larson conceded, “Yes, there was,” and he further acknowledged that the letter made “some changes in Section 1.01 regarding recognition.”

More specifically, Larson testified that, “Regarding projector screens, projection equipment, videotape equipment and any related audio/visual equipment was taken out.” No question, therefore, that from the outset Respondent eliminated that portion of the historical bargaining unit which stated, “projector screens, projection equipment, videotape equipment and any related audio/visual equipment”. That change was an already implemented one. And that was not the sole portion of the unit eliminated as a result of the September 18 letter. Respondent does not contest that also removed was the “wardrobe” portion from the historical bargaining unit.

As to “wardrobe,” Respondent contends that its elimination had been inadvertent—that it never intended to remove the wardrobe portion of the historical bargaining unit. In fact, removal of that classification from the bargaining unit served no purpose in connection with Respondent’s explanation for removal of the projection, videotape and related audio/visual equipment portion of the historical bargaining unit description. To the contrary, it is uncontested that, when the omission was brought to its attention, Respondent promptly explained that omission of wardrobe had been inadvertent and, then, promptly restored that classification to its subsequent proposals. It would be difficult to attribute bad faith bargaining to a party for a mistake. The mistaken omission had no adverse effect upon the parties’ ensuing negotiations, so far as the evidence reveals. Therefore, I shall recommend that the allegation pertaining to omission of wardrobe, from the September 18 letter and initial bargaining, be dismissed.

Insofar as projection, videotape and related audio/visual equipment are concerned, their omission from the September 18 work-enumeration did not escape the Union’s notice. In an undated letter, seemingly sent on September 22, Rice stated that he was “not sure [of] the intent of your statements in your letter,” but that “all work as described in Article 1.1 [sic] is to be done by IATSE Local 13 and **only** Local 13.” Counsel for Respondent replied, by letter dated September 25. He stated that Respondent was not adopting the expired 1997-2000 collective-bargaining contract between the Union and Ogden and, moreover, asserted that Respondent would hire stagehands dispatched by the Union “only when the Company decides that it is necessary, not when the Union decides that it is necessary.”

In that letter, counsel makes no mention of the bargaining unit. But, he did suggest five October dates for conducting negotiations, a suggestion that further reinforces Respondent’s earlier voluntary recognition of the Union as bargaining agent for the stagehands who would be working at Target Center Arena.

Eventually the parties agreed to meet on October 25. In anticipation of that meeting, under cover letter dated October 23, Respondent transmitted to the Union “a binder that includes” several documents: a copy of the expired 1997-2000 collective-bargaining contract between the Union and Ogden; “a ‘red-lined’ document that compares the expired agreement to the

terms and conditions of employment that are *currently in effect*” (emphasis added); Respondent’s “proposal for a new collective bargaining agreement”; “a red-lined document that compares [Respondent’s] proposal to the terms and conditions of employment that are *currently in effect*” (emphasis added); and, copies of certain correspondent already exchanged between Respondent and the Union.

The “red-lined documents,” referred to in the immediately preceding paragraph, omit from the bargaining unit the phrase “projector screens, projection equipment, videotape equipment and any related audio/visual equipment,” from the bargaining unit description of Article I, Section 1.01. Also deleted in its entirety is Article I, Section 1.05, the provision added to the 1997-2000 contract to correct the dispute that had arisen during filming of the Nordstrom’s commercial, as described in subsection C above. The underscored “currently in effect” portion of Respondent October 25 make plain that Respondent was not inviting bargaining about deletion of “projector screens, projection equipment, videotape equipment and any related audio/visual equipment” from the historical bargaining unit. Rather, that phrase makes plain that, even before commencing negotiations with the Union, Respondent had actually implemented a change in that bargaining unit. Indeed, Respondent freely concedes as much. For example, during cross-examination, Respondent was satisfied with an affirmative answer elicited from Rice—“Yes”—in response to the question about Respondent’s October 23 proposal having been “created after the initial terms and conditions were *implemented* by” Respondent. (Emphasis added.)

During the October 25 bargaining session, Rice testified, “[b]asically we didn’t want to discuss changing the recognition of the [U]nion,” and “we basically refused to negotiate the recognition.” Larson agreed that Rice “indicated that he didn’t want any change to Section 1.01, that we’d be taking work away if we did that,” though Rice had not made “any reference to any specific work that he was talking about.” Given the evidence reviewed in this and the immediately preceding two paragraphs, there can be no doubt that Respondent had actually changed the historical bargaining unit even before commencing negotiations with the Union. There is no room for any argument that Respondent had been doing no more than simply attempting to bargain about a change in that historical bargaining unit.

By letter to the Union dated November 28, Respondent advanced the first of two modifications that it would offer to that already-implemented change in the bargaining unit. It continued to regard “projector screens, projection equipment, videotape equipment and any related audio/visual equipment” as no longer in the bargaining unit for which it had recognized the Union as the exclusive collective-bargaining representative. But, in that letter, it proposed adding “projector screens, projection equipment, videotape equipment and related audio visual equipment for display to the entire live audience during the course of a show’s performance”. Under that proposal, therefore, the bargaining unit would become, in pertinent part:

employees that perform the functions customarily within the jurisdiction of the Union, including, by way of illustration but

not limitation, the installation, operation, dismantling and rigging of temporary and permanent sound equipment, lighting equipment, band gear, temporary staging, properties, scenery, drops and drapery; fork-lift operation; wardrobe; **projector screens, projection equipment, videotape equipment and related audio visual equipment for display to the entire live audience during the course of a show's performance;** the loading and unloading of trucks carrying equipment described in this Section 1.01 and various other duties incidental or related to the preparation or rendition of events, including the carrying of television lighting equipment and installation of such equipment.

Thus, Larson explained, the underscored and bold-faced addition would pertain to the video- screen-operation, but only to the extent that screens were being used to enhance shows for live audiences in the arena.

The Union continued to oppose any change in the historical bargaining unit's description. For example, Rice testified that during meetings on January 3 and 4, the Union had "refused to discuss any of the recognition," though there was movement "with other issues, wages, benefits, pensions,...rigging," but "we refused to discuss Article [I]." Mediation was requested by Respondent during the January 4 meeting. But, the parties stipulated that, during an ensuing meeting with a mediator, neither side changed its position concerning the unit. Following that meeting, Larson invited Rice to lunch, in an effort to break what was becoming, if it had not already become, an impasse in the negotiations. During that meeting, testified Rice, without contradiction, Larson had been "willing to make concessions on premium time provisions and that kind of stiff if we would make concessions in the recognition," but Rice was not willing to do so.

Larson took a second stab at modifying its already-implemented unit change, in a letter to Rice dated February 1, 2001. He proposed that "[t]he parties specifically incorporate the arbitration decision of Arbitrator Laura Cooper...into the Agreement for purposes of determining certain work that is not within the Union's jurisdiction." Then, Respondent "may, in the future, assign such work to the Union," and "also may suggest that clients of the Target Center utilize Union members and the Union referral system for such work," with the understanding that "the Union's performance of such work shall not transform such work into the Union's jurisdiction," and that the Union would make no claim that such work was "a custom or practice or, in any other way, restricts [Respondent's] rights under Article 1.02 [sic]."

In that letter Larson also offered to submit to disputes resolution, following discussions between the parties, whether particular productions can be regarded as "locally originated and small-in-scope attraction[s]." Finally, he proposed that whenever work at the arena was to be "performed by persons working for other than" Respondent—apparently the category of work covered by Article I, Section 1.05 of the 1997-2000 contract in response to the Nordstrom's dispute, but deleted by Respondent from its proposals—"such persons shall be paid no less than the compensation (wages plus economic cost of bene-

fits) paid to employees pursuant to the Agreement," accompanied by provisions designed to verify such payments.

By letter dated February 9, 2001, Respondent, in effect, renewed those proposals made in Larson's letter of February 1, 2001. The Union continued to rebuff Respondent's efforts to contractually-change the historical bargaining unit. However, it does not dispute Larson's testimony that, "as a result of *implementation*" (emphasis added) of the September 18 changes, its members had not lost any work. In fact, Larson agreed that the Union had not made any claim since November 28 that there had been any loss of work by stagehands whom it represented. Inherently, that situation raises an eyebrow about why Respondent made the unit changes that it had admittedly made by September 18. Moreover, it is not clear whether the Union would have lost work after November 28, had Respondent not been attempting to protect itself from any remedial backpay order as a result of failure to apply existing terms and conditions of employment to persons which it was excluding from the historical bargaining unit.

II. DISCUSSION

As stated in section I.A., *supra*, Respondent denies that it is a successor-employer to Aramark Entertainment and, before it, Ogden Entertainment. In fact, there is one aspect of its replacement of those employers, as manager of Target Center Arena, which could provide some question as to successor status. But, as will be seen, that aspect is not significant in the factual setting provided here.

"The overriding policy of the [Act] is 'industrial peace.' *Brooks v. NLRB*, 348 U.S. at 102," the Supreme Court reaffirmed in *Fall River Dyeing & Finishing Corp.*, 482 U.S. 27, 38 (1987). As the Court made plain in that decision, that policy is of no less concern whenever there has been a change in the employing entity. "If the employees find themselves in essentially the same jobs after the employer transition and if their legitimate expectations in continued representation by their union are thwarted, their dissatisfaction may lead to labor unrest." (Citation omitted.) 442 U.S. at 43-44. To avoid that, the Court highlighted the importance of "presumptions of [ongoing] majority support" (at 38), extended under the Act to incumbent collective-bargaining representatives. "The upshot of the presumptions is to permit unions to develop stable bargaining relationships with employers, which will enable the unions to pursue the goals of their members, and this pursuit, in turn, will further industrial peace." 442 U.S. at 38-39.

Those presumptions of continued majority support for a historical bargaining agent, and the bargaining obligations existing as a consequence of them, are "not limited to a situation where the union in question has been recently certified. Where...the union has a rebuttable presumption of majority status, this status continues despite the change in employers" (442 U.S. at 41), so long as the new employer is a successor to its predecessor under the Act. After all, "[v]oluntary recognition is a favored element of national labor policy." *NLRB v. Broadmoor Lumber Co.*, 578 F.2d 238, 241 (9th Cir. 1978). "Bargaining obligations are the same whether the union is certified by the Board or voluntarily recognized by the employer." (Citations

omitted.) *NLRB v. Hudson River Aggregates, Inc.*, 639 F.2d 865 (2d Cir. 1981).

Careful reading of the Courts opinions in *Fall River Dyeing & Finishing* and in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), as well as in *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), leave no doubt that successorship determinations are governed, in general, by examination of the comparative employing enterprises and, secondly, by examination of the comparative employee complements. Here, there can be no question that, during 2000, there had been a continuity of employing enterprise, from Ogden Entertainment to Aramark Entertainment to Respondent, at Target Center Arena. All three managed the same facility in the same location. They all managed presentation and staging of the same types of events—basketball and hockey games, wrestling matches and ice shows, concerts and circuses, etc. They all dealt with the same producers, or types of producers, of those events. All of those events were staged and presented to audiences consisting of the general public though, to be sure, different segments of the public might attend one type of event, but not another. The same individual, then-Assistant Executive Director of Operations Jack Larson, successively supplied day-to-day management for Ogden Entertainment, then for Aramark Entertainment and, finally for Respondent.

Respondent has pointed to no aspect of Target Center Arena operations that were changed after it began managing operations there for Minneapolis Community Development Agency. Therefore, a preponderance of the evidence shows that there was continuity of employing enterprise for the Target Center Arena manager throughout 2000: from Ogden Entertainment to Aramark Entertainment to, finally, Respondent.

A somewhat more complicated situation could have been presented by the factor of comparative employee complements. The ordinary successor situation is one where a given complement of employees has worked day-by-day, week-by-week for the alleged predecessor and, then, the alleged successor hires an employee-complement that works day-by-day, week-by-week for it. Thus, identity of employee-complement can be ascertained by simple comparison of who worked before the change in employer, with the identities of whoever began working for the successor. In turn, that supplies a ready answer to the question of whether or not a majority of a substantial and representative complement of the alleged successor's employees had been employees of the alleged predecessor.

Here, however, there is no ongoing employment of stagehands at Target Center Arena. They are employed there only whenever an event is staged and presented at the arena. In between events, at least so far as the record shows, no stagehands are employed there. So, stagehands' employment at the arena is irregular, sometimes being more frequent—whenever a series of events are scheduled back-to-back-to-back—while being less frequent during periods when only a relatively minimal number of events are scheduled during a given time period. Furthermore, from event to event, the numbers of stagehands will vary, such that a relatively large number of stagehands will be needed for some events, but not for others.

That situation could have become further complicated by the fact that stagehands are dispatched to Target Center Arena from

a referral list consisting of approximately 1,400 registrants. Usually, someone referred from such a list can, again, have his/her name registered for another referral only by re-registering at the bottom of the list, after having completed the job to which referred. So, ordinarily such referral lists are exhausted before any particular registrant can again be referred. Were that procedure followed here, for example, any given stagehand would not again be referred to Target Center Arena until all stagehands above him/her, at the time of re-registering, had been dispatched to jobs. Moreover, given that the Union has contracts with 14 employers, all of whom seemingly utilize the Union's referral list for their stagehands, a re-registered employee would not be assured of another referral to the same employer as the one to whom he/she had previously been dispatched, depending on the scheduling of events by each one of those 14 employers.

In fact, existence of referral from a hiring hall presents an inherent unique potential twist. Registrants cannot under the Act be confined to union-members where a hiring hall is the exclusive source of employees for employers contractually-bound to resort to that hall for new hires. Indeed, since an exclusive hiring hall is the only means for employees to obtain employment with employers contractually-obliged to utilize that hall, registration there does not necessarily mean that the registrant even wants to be represented by the union operating the hall. Rather, registration at an exclusive hiring hall can be inferred to mean no more than that the registrant wants to work and, accordingly, registers as one means of obtaining a job.

The considerations enumerated in the preceding three paragraphs could present potential difficulty when evaluating the factor of identity of employee-complement in situations where employees are obtained from an exclusive hiring hall for jobs which irregularly occur, which vary in numbers of employees needed on a job-by-job basis, and which are of short-term duration. In the circumstances presented here, however, that situation need not be addressed and can be left for consideration on a later day.

At the outset, Respondent has raised no issue concerning ongoing support for the Union by stagehands dispatched to events at Target Center Arena after September 21. That is, it has not asserted any doubt regarding the desires of those employees for continued representation by the Union, much less shown lack of continuing support of the Union by a majority of them. Thus, the considerations raised two paragraphs above are not ones that need be addressed in the circumstances presented here. So far as the evidence shows, at least a majority of the stagehands who worked at Target Center Arena for Respondent continued to desire representation by the Union. Certainly, there is no evidence showing that a majority of them, working on any one event or working on the totality of events staged and presented since September 21, did not want continued representation by the Union. In fact, as discussed further below, Respondent voluntarily recognized the Union as the exclusive collective-bargaining representative of stagehands working for it at Target Center Arena—an action that obliterates completely any challenge to the Union's representative status among stagehands working there.

Beyond that, the fact that an alleged predecessor and an alleged successor have regularly drawn their employees from the same common pool of employees, even though particular employees might not be working on all or even most projects for both employers, is inherently some indication of continuity of employee complement. After all, employees from that common pool of employees will, over time, “find themselves in essentially the same jobs after the employer transition,” *Fall River Dyeing & Finishing Corp. v. NLRB*, supra, 482 U.S. at 43–44. For, as concluded above, Respondent operated at Target Center Arena as the same employing entity as had Aramark Entertainment and, before it, Ogden Entertainment. Stagehands dispatched to the arena before and after September 21 performed the same work, at the same location, for the same publicly-presented and -staged events, under the same day-to-day management. No change in any of those factors has been shown to have occurred after Respondent replaced Aramark Entertainment—nor, for that matter, after Aramark Entertainment replaced Ogden Entertainment.

From that premise, it follows that, even had the exact same stagehands not been dispatched throughout 2000 for every event, or even most events, at Target Center Arena, the fact that all of them came from a common pool of registrants would naturally lead all, or at least the majority of, stagehands in that pool to continue expecting that they would be represented by the Union whenever working there. Thus, no less than in situations where an identical majority of the alleged successor’s employees had been employed by the predecessor, if the pool of registrants’ “legitimate expectations in continued representation by their union are thwarted, their dissatisfaction may lead to labor unrest.” *Id.* Such employee-unrest naturally undermines the very industrial peace sought by the overriding policy of the Act. *Id.*, 482 U.S. at 38. Given those considerations, one should not lightly conclude that no successorship can occur whenever employment in a particular industry is performed by employees dispatched from a common pool of employees, on an event-by-event or project-by-project basis, instead of there being a set number of employees, whose identities are the same when the new employer commences operations as they had been under the old employer. In any event, however, it is not truly necessary to resolve that pristine question, given two considerations present in the instant case.

First, Respondent admits, in its brief, that the Union’s “members had performed all video screen work historically performed since Respondent’s assumption of Target Center operations, and continued to perform all such work afterward.” Moreover, as pointed out in section I.C., supra, it is uncontested that, under the Union’s start-at-the-top dispatching procedure, the first 100, of the 1400 total, people registered on its referral list had been repeatedly referred to Target Center Arena, whether managed by Ogden Entertainment, Aramark Entertainment or Respondent. Thus, even given disparities in numbers and skills of stagehands required for staging and presentation of particular events at the arena, over time the same stagehands returned there to work, event after event. Just as it is presumed under the Act that already-represented employees of an employer continue to support continued representation by an incumbent bargaining agent, so, also, it can be presumed that

those approximately 100 regularly-returning employees would continue to support representation by the Union and, beyond that, would continue to support employment under terms and conditions set by collective-bargaining between the Union and their employer, whether it be Ogden Entertainment, Aramark Entertainment or Respondent. Certainly, labor unrest could result were that more-specific group of 100 regularly-dispatched stagehands to discover that “their legitimate expectations in continued representation by their union [were being] thwarted,” *Id.*, 482 U.S. at 43–44.

Second, ordinarily a successor is confronted with a demand for recognition by an incumbent bargaining agent. That did not occur here because, as pointed out in section I.D., supra, from the outset Respondent voluntarily recognized the Union. Thus, in its September 18 letter, it gave notice that it was interested in negotiating a collective-bargaining contract with the Union and invited the latter’s proposals. Later, it suggested five possible October dates for bargaining and, in fact, did meet with the Union on one of those dates, after having submitted to the Union its own proposals for a collective-bargaining contract. Subsequent bargaining sessions occurred during 2000 and throughout early 2001. Given those facts, it would be difficult to conclude other than that Respondent had extended voluntary recognition to the Union. The absence of a demand for recognition by the Union, of itself, does not undermine that conclusion. “Voluntary recognition is a favored element of national labor policy.” *NLRB v. Broadmoor Lumber Co.*, supra. Underlying its letter of September 18, Respondent seemingly recognized that the vast majority of its stagehands would be dispatched to Target Center Arena by the Union. It has not contended—much less, shown—that a majority of those post-September 18-dispatched stagehands no longer desired representation by the Union. In such a context, it would be absurd—virtually Byzantine—logic to conclude that the absence of a bargaining demand by the Union somehow prevents Respondent’s voluntary recognition from being accorded the natural weight to which it is entitled under the Act.

In sum, a preponderance of the evidence establishes that there had been a substantial continuity of the enterprise, when Respondent succeeded Aramark for production of operations at Target Center Arena. Moreover, a preponderance of the evidence establishes that there was a substantial identity of stagehands dispatched to and employed at the arena from Ogden Entertainment to Aramark Entertainment to Respondent. In fact, Respondent followed the course that the Act expects successor-employers to follow: it accepted its successorship status by voluntarily recognizing the Union, even before the latter had a chance to demand recognition. However, its recognition of the Union was limited.

As set forth in subsection I.C., supra, the historical bargaining unit had included “installation, operation, dismantling, and rigging of...projector screens, projection equipment, videotape equipment and any related audio/visual equipment”. But, from the outset, Respondent refused to continue including in the unit the projection, videotape and related audio/visual equipment portion of that historical unit, as described in section I.D., supra. Now, that was a significant step for an employer to take under the Act. “Units with extensive bargaining history remain

intact unless repugnant to Board policy or interfere with rights guaranteed by the Act.” (Footnote omitted.) *P. J. Dick Contracting*, 290 NLRB 150, 151 (1988). After all, bargaining history is “evidence of natural groupings of employees,” *International Association of Tool Craftsmen v. Leedom*, 276 F.2d 514, 516 (D.C. Cir. 1960), cert. denied 364 U.S. 815, and perpetuation of such historical “natural groupings” advances the policy of industrial stability and industrial peace.

That conclusion is no less applicable whenever one employer succeeds another as the employer of employees who have been represented in a historical bargaining unit. That is, “mere change in [employer] should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness.” *Indianapolis Mack Sales*, 288 NLRB 1123 fn. 5 (1988). Accord: *Trident Seafoods, Inc.*, 318 NLRB 738 (1995); *NLRB v. Joe B. Foods, Incorporated*, 935 F.2d 287 (7th Cir. 1992). Respondent has not shown any change, following September 20, that left the historical bargaining unit, existing under Ogden Entertainment and under Aramark Entertainment, no longer conforming to other standards of appropriateness. Nor is there evidence of post-September 20 changes in operations and organizational structures at Target Center Arena that served to undermine the ongoing stability of the historical bargaining unit, arising from inclusion of “projector screens, projection equipment, videotape equipment and any related audio/visual equipment” in that unit. Absent such a showing, a successor employer is not free to sort through a historical bargaining unit, picking and choosing to what extent it will continue recognizing an incumbent bargaining representative.

It should escape the notice of no one that, by modifying the historical bargaining unit, Respondent effectively deprived now-excluded employees of representation to which they are entitled under Section 9 of the Act and, concomitantly, effectively deprived those now-excluded employees from coverage under any collective-bargaining contract eventually negotiated with the Union. To say that their exclusion is of no consequence, accordingly, is simply inaccurate, especially viewing the changes from the now-excluded employees’ perspective. *Fall River Dyeing & Finishing Corp. v. NLRB*, supra, 482 U.S. at 43. As a result of the deletions, those employees lost their representation and any contractual benefits that their now-lost representative could negotiate for employees whom Respondent was willing to continue including in the historical bargaining unit.

It also should escape no one’s notice that what occurred here was not simply a party’s proposal for changes in an established bargaining unit. Parties are free to propose unit changes and to voluntarily bargaining about them. See discussion, *Bridon Cordage, Inc.*, 329 NLRB 258, 264 (1999). But, parties cannot be compelled to bargain about changes in bargaining units and, surely, no such bargaining can be pursued to impasse. “Unit scope is not a mandatory bargaining subject,” *Bozzuto’s, Inc.*, 277 NLRB 977, 977 (1985), nor is “the composition of the bargaining unit.” *Newspaper Printing Corp. v. NLRB*, 625 F.2d 956, 964–965 (10th Cir. 1980), cert. denied 450 U.S. 911 (1981). Were they mandatory bargaining subjects, “an employer could use its bargaining power to restrict (or extend) the

scope of union representation in derogation of employees’ guaranteed right to representatives of their own choice.” (Footnote omitted.) *Idaho Statesman v. NLRB*, 836 F.2d 1396 (D.C. Cir. 1988). Thus, adherence to a historical and fixed bargaining unit “is central to Congress’ purpose of stabilizing labor-management relations in interstate commerce.” (Citation omitted.) *NLRB v. United Technologies Corp.*, 884 F.2d 1569 (2d Cir. 1989).

Respondent points out in its brief that it had not bargained to impasse about elimination of “projector screens, projection equipment, videotape equipment and any related audio/visual equipment” from the historical bargaining unit. That is quite accurate. Instead of bargaining about elimination of that portion of the historical bargaining unit, or even offering to bargain about it, Respondent simply deleted that portion of the historical bargaining unit. Thus, as portions of Respondent’s correspondence, Larson’s testimony, and a question put to Rice during cross-examination, quoted and underscored in section I.D., supra—“currently in effect”, “implemented”, “implementation”—demonstrate, Respondent had already made those deletions from the historical bargaining unit, before even undertaking any negotiations with the Union. The unit-deletions were unilateral. In the face of those unilateral deletions, the Union was forced to attempt to recover representation of that portion of the historical bargaining unit, through negotiations.

In sum, Respondent was a successor employer who recognized the historical bargaining agent, but in the process unilaterally changed the historical bargaining unit for which that bargaining agent had been the historical representative. In view of the principles discussed above, such conduct violates Section 8(a)(5) and (1) of the Act. However, Respondent has advanced several defenses, in an effort to avoid such an ultimate conclusion and any remedial obligations that naturally follow as a consequence of it.

First, pointing primarily to the Supreme Court’s decision in *NLRB v. Burns Security Services*, supra, it argues that, by deleting the projection and videotape portions of the historical bargaining unit, it had done no more than “set initial terms on which it [would] hire the employees of a predecessor,” which the Court held that a successor-employer was allowed to do under the Act. 406 U.S. at 294. However, that is not a satisfactory defense to deletions from a historical bargaining unit. A careful reading of the Court’s opinion reveals that it did not intend, by that portion of its decision, to grant free rein for successor-employers to sort through historical bargaining units, picking and choosing which employees encompassed by those units it would be allowed continued representation by their historical bargaining agent.

The Court made clear that successor-employers would be permitted to “set initial terms” only to the extent encompassed by Section 8(d) of the Act. Thus, only “wages, hours, and other terms and conditions of employment” are covered by the “initial terms” which successor-employers can set. As discussed above, scope and composition of bargaining units are not mandatory subjects of bargaining. That is so because unit scope and composition are not embraced by “wages, hours, and other terms and conditions of employment,” within the meaning of Section 8(d) of the Act. Accordingly, the “set initial terms”

allowance of *Burns* does not extend to unilateral adjustments of historical bargaining units, at least not to the extent that predecessors' operations are continuing under successor-employers.

To the contrary, the Court has held explicitly that preservation of work traditionally performed is "[a]mong the primary purposes protected by the Act," *NLRB v. Longshoremen's*, 447 U.S. 490, 504 (1980). It hardly promotes industrial peace to allow successor-employers to sort and sift through historical bargaining units of employees, whom those employers are continuing to employ under the same circumstances, picking and choosing the extent to which they will recognize and not recognize the historical bargaining agent as the exclusive collective-bargaining representative of historically-represented employees.

To be sure, the Court in *Burns* expressed concern about situations where "[a] potential employer may be willing to take over a moribund business only if he can make changes in corporate structure, composition of the labor force, work location, task assignment, and nature of supervision." 406 U.S. at 287–288. Yet, those are subjects that are accommodated by the meaning of "initial terms" of employment. Inherently, continued viability of the historical bargaining unit is a quite distinct subject. There is no basis for concluding that unilateral adjustments to historical bargaining units would somehow promote revival of moribund businesses and the Court did not so hold.

In any event, the instant case does not present a situation for addressing that consideration. So far as the record discloses, Respondent did not "take over a moribund business" at Target Center Arena. Indeed, there is no evidence showing that it made any changes, including its unilateral elimination of a portion of the historical bargaining unit, as a means of reviving or, even, improving operations at that arena. Consequently, there is no basis in the record for inferring—much less, concluding—that there had been a need to remove "projector screens, projection equipment, videotape equipment and any related audio/visual equipment" from the historical bargaining unit, to revive or improve operations at Target Center Arena.

Beyond that, there is a separate reason for concluding that the Court's allowance for "set[ting] initial terms" is not applicable to the situation presented by the instant case. The Court excepted from that allowance situations where "it is perfectly clear that the new employer plans to retain all of the employees in the unit"; it held that in such situations, "it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes [those initial] terms." *Id.* As pointed out in section I.D., *supra*, in its September 18 letter, Respondent gave notice that it planned to "continue to look to [the Union] for stagehands to perform work at the Target Center." In fact, there is no evidence that Respondent planned to look to any other source—hires off the Twin Cities' streets, temporary transfers from other locations throughout the United States—for any significant numbers of stagehands, if any at all, to be employed at that arena. Accordingly, as concluded above, the vast majority, if not all, stagehands employed at Target Center Arena by Respondent would be ones previously employed there by Aramark Entertainment and, before it, by Ogden Entertainment. There is no evidence that would support a conclusion that Respondent had any belief to the contrary.

Furthermore, there is no evidence whatsoever that would support a conclusion that, chronologically, Respondent had decided upon its unilateral eliminations from the historical bargaining unit before it had realized that the vast majority, if not all, stagehands that it would be hiring for arena-work would be obtained from the Union's referral list. To the contrary, its willingness to continue recognizing the Union was a decision quite obviously made because it anticipated that its primary, if not sole, source of stagehands would be the same referral list as had been resorted-to by Aramark Entertainment and, before it, Ogden Entertainment. Thus, its attention to the historical bargaining unit set forth in the 1990–1993 and 1997–2000 collective-bargaining contracts. In consequence, so far as the evidence shows, by the time that Respondent planned and implemented its elimination of the above-quoted portion from the historical bargaining unit, it was "perfectly clear" to Respondent that it would be continuing to obtain the vast majority, if not all, of its stagehands for Target Center Arena from the Union's referral list. That being the fact, Respondent was not allowed by *Burns* to set initial terms without first conferring with the Union and, surely, not to eliminate a portion of the historical bargaining unit—not a subject embraced by Section 8(d) of the Act—without first obtaining the Union's agreement to any such elimination.

As a second defense, Respondent points to the historical bargaining unit and, then, argues in essence that it had done no more in September than remove particular work assignments—"installation, operation, dismantling, and rigging of . . . projector screens, projection equipment, videotape equipment and any related audio/visual equipment"—from that unit. In fact, unit principles have evolved to the point where there is a well-recognized distinction among the concepts of unit classification, work assignments and union jurisdiction. See, e.g., *Boise Cascade Corp. v. NLRB*, 860 F.2d 471 fns. 11 and 12 (D.C. Cir. 1988); *Newport News Shipbuilding and Dry Dock Co. v. NLRB*, 602 F.2d 73, 77–78 (4th Cir. 1979). Those distinctions cannot simply be characterized as "meaningless." Unit classification is not a mandatory subject of bargaining. But, work assignments are mandatory subjects of bargaining. The Circuit Courts have recognized—in fact, taken the lead in formulating—distinction among them. As a result, problems arise where, as here, the unit description is phrased, in whole or in part, in terms of work performed.

In *Antelope Valley Press*, 311 NLRB 459 (1993), the Board addressed those situations, holding that employers may bargain about and insist on transferring work described in those units. But, the Board holds, they may do so only so long as those employers first bargain to impasse about such transfers, do not change the unit descriptions, and, finally, do not "insist that nonunit employees to whom the work is transferred will remain outside the unit." *Bremerton Sun Publishing Co.*, 311 NLRB 467, 470 (1993). A review of the facts set forth in section I.D., *supra*, disclose that Respondent engaged in conduct which satisfied not one of those three conditions.

Respondent did not first bargain about removing "projector screens, projection equipment, videotape equipment and any related audio/visual equipment" from the historical bargaining unit. Instead, from the outset during September, it admittedly

“implemented” removal of that portion of the historical bargaining unit and declared that the now-reduced bargaining unit was “currently in effect,” leaving the Union to somehow try to recover representation of employees whom the Union had historically represented. Obviously, elimination of that phrase did operate as a change in the historical bargaining unit. Employees formerly encompassed within the bargaining unit would no longer be guaranteed that they were included in the bargaining unit. They would no longer be contractually-guaranteed representation by their historical bargaining agent. They would no longer be contractually-guaranteed the benefits of any collective-bargaining contract negotiated by Respondent and the Union. They were left in the cold, as a result of Respondent’s unilateral removal of that portion of the historical bargaining unit which had previously covered them. Such a result “is not conducive to industrial peace.” *Fall River Dyeing & Finishing Corp. v. NLRB*, supra, 482 U.S. at 39–40.

Finally, the “implemented” removal of that portion of the unit, so far as the evidence shows, left no room to restoration to the bargaining unit of employees who would be performing that work. Despite the two subsequent modifications, discussed in section I.D., supra, and below, Respondent continued to adhere to its already-implemented deletion of the above-quoted language from the historical bargaining unit. So, the only terms upon which a collective-bargaining contract could be negotiated between Respondent and the Union, would be ones that excluded that portion of the historical bargaining unit. To that extent, Respondent was insisting that employees, historically covered by that portion of the bargaining unit, be placed permanently outside of the bargaining unit.

To be sure, no evidence contradicts the evidence that, as of the hearing date, no members of the Union had actually lost any work, including projection and videotape equipment, and related work, which they had performed historically at Target Center Arena. On the other hand, since March 7, 2001, there has been an unfair labor practice charge pertaining to Respondent’s elimination of part of the historical bargaining unit. Even before that date, Respondent, represented by experienced counsel, could fairly anticipate that it might be facing an unfair labor practice charge, as a result of its unilateral elimination of that portion of the historical bargaining unit and the Union’s voiced opposition to that elimination. So, there is some objective basis for inferring that Respondent might well have decided to proceed with care in connection with work assignments embraced by the deleted portion of that historical unit.

In any event, past is not necessarily prologue. Were it to be determined that Respondent no longer had to recognize the Union as the exclusive bargaining agent of employees covered by that eliminated portion of the unit, then Respondent would be free to deal as it wished with whomever it chose to perform that work. Those employees would become shorn of future representation. Respondent would be free to deal individually with them, formulating whatever employment terms and conditions it chose to apply to them.

Respondent’s third argument is that it eventually did make two modifications, described in section I.D., supra, and that those modifications reinforce its position that it had eliminated some of the historical bargaining unit for no reason other than

conforming the unit to what had been the practice under Aramark Entertainment and, more particularly, under Ogden Entertainment. But, there simply is no basis for concluding that absolute elimination of “projector screens, projection equipment, videotape equipment and any related audio/visual equipment” somehow conformed the unit to practice under those two preceding employers. Respondent has adduced no evidence showing that, in practice, unit employees had not performed any of that work for Aramark Entertainment and, before it, for Ogden Entertainment.

True, the two modifications—“for display to the entire live audience during the course of a show’s performance” and “incorporate the arbitration decision of Arbitrator Laura Cooper...into the Agreement for purposes of determining certain work that is not within the Union jurisdiction”—would have been legitimate proposals for eventual modification of a historical bargaining unit. Here, however, Respondent put the cart before the horse. It had already eliminated that now-disputed portion of the historical bargaining unit. In consequence, the Union was being forced to try to recover that portion of its historical bargaining unit. Against that background, the modifications represented no more than an effort by Respondent to prevent the Union from achieving full recovery of representation of the historical bargaining unit. In short, whatever modifications Respondent eventually proposed, the context of their proposal was one in which unilateral changes had already been made and the Union was being forced to knee-pad in an effort to recover representation of employees whom it had been historically representing in a bargaining unit established, until Respondent chose to unilaterally eliminate portions of it.

The fact is that, even with the modifications, the evidence will not support a conclusion that the already-implemented unit eliminations conformed to the situation as it existed under Aramark Entertainment and, before it, Ogden Entertainment. No question that unit employees had not historically been performing some of the disputed work whenever events were broadcast from the arena. Yet, as Arbitrator Cooper pointed out in her decision, Ogden Entertainment acknowledged that stagehands in the historical bargaining unit were entitled to “pull electrical cable from a generator supplied by a musical or other act,” and, also, to “run[] the cable from a disconnect to lights or sound,” apparently without regard to presence or absence of a television crew employed by a network or local broadcaster.

More significantly, Arbitrator Cooper’s decision involved only “television support work” for a single event, the 1998 WFSC. At no point did she purport to render a decision that would apply to every possible televised or broadcast-event. To the contrary, while she found it not relevant to the 1998 WFSC-event, she pointed out that bargaining unit stagehands had “brought electrical cable from an outside generator to a disconnect” for three WCW Monday Nitro TNT professional wrestling events and, in addition, for an NBA All-Star Game.

Clearly, therefore, her decision shows that there had not been a firm and rigid demarcation line between “installation, operation, dismantling and rigging of . . . projector screens, projection equipment, videotape equipment and related audio/visual equipment,” whenever Target Center Arena events were being

broadcast and when they were not being broadcast. That is, the arbitration decision shows that there had not truly been a hard and fast practice of confining that work by unit employees to situations where only “display to the entire live audience during the course of a show’s performance” had been involved. It further shows that there had some situations, albeit without firm description in the arbitration decision of precise parameters, when unit employees performed at least some of that work even when events were being telecast or broadcast to audiences outside the arena. In sum, even were the bargaining situation to be evaluated from the perspective of its totality—the unilateral elimination of a portion of the historical bargaining unit, followed by one proffered modification and, then, another—it has not been established by the evidence that Respondent’s ultimate change, as modified, would conform the unit to historic practice.

Respondent’s fourth argument is more practically-rooted. It pertains to the facial ambiguity of the portion it eliminated from the historical bargaining unit and the asserted “multiplicity of disputes over the scope of the Union’s jurisdiction” which had been “endured” by its “predecessors”. At the outset, that argument overstates the actual history of bargaining. The record shows that there had been no more than three disputes—the Nordstrom’s commercial, the McDonald’s commercial, and the 1998 WFSC—over the course a decade’s bargaining relationship. So relatively few a number of disputes over so relatively prolonged period hardly seems, on its face, to rise to the level of characterization as “multiplicity.” In fact, as described in section I.C., *supra*, the circumstances leading to the Nordstrom’s dispute were clarified by Ogden Entertainment and the Union’s agreement to add section 1.05 to article I in their 1997–2000 collective-bargaining contract. The fact that Respondent unilaterally eliminated, as well, that very section from its proposals raises some suspicion regarding its now-advanced argument that it had been attempting to do no more than clarify the bargaining unit, for simplicity of application to operations at Target Center Arena.

In any event, a party—be it employer or labor organization—hardly is allowed under the Act to justify unilateral elimination of contractual provisions, especially those describing bargaining units, on the basis of a simplicity argument. After all, in the end, countenancing such an argument for unilateral action would essentially endorse unilateral elimination of all more-than-simply-stated provisions of collective-bargaining contracts. Such endorsement would promote unilateral action and generate the very industrial unrest that the policy of the Act seeks to prevent. When applied to historical bargaining units, such endorsement would not only naturally generate industrial unrest, but it would operate to deprive employees in unilaterally-eliminated unit positions of representation of their own choosing. Such a result would effectively erase the very employee-right to choose representation which the Act explicitly guarantees to employees.

Whenever bargaining units are ambiguous, employers and labor organizations are afforded various avenues for eliminating or, at least, mitigating those ambiguities. They can attempt to bargain to accomplish clarity of application, as did Ogden Entertainment and the Union when they negotiated the addition

of section 1.05 to article I of their 1997–2000 collective-bargaining contract. They can petition the Board for unit clarification whenever a dispute arises. They can pursue their disputes to arbitration, as did Ogden Entertainment and the Union regarding the 1998 WFSC. True, arbitration can be expensive and time-consuming. But, there is no basis for concluding on this record that, over its decade-long representation of Target Center Arena stagehands, the Union had been disposed to resort to ongoing arbitrations, as a means for resolving unit-related disputes. One time in a decade is hardly a “multiplicity.” Furthermore, it should not escape notice that the Supreme Court has endorsed arbitration, as a process favored by federal policy. See, e.g., *Moses H. Cone Memorial Hospital v. Mercury Construction*, 460 U.S. 1, 24 (1983), and *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279 (2002). Against that background, unilateral elimination of a portion of a historical bargaining unit can hardly be justified by arguing that it avoids occasional disputes resolution leading to arbitration.

CONCLUSION OF LAW

SFX Target Center Arena Management, LLC has committed unfair labor practices affecting commerce by unilaterally eliminating the underscored portion of an appropriate historical bargaining unit of:

employees that perform the functions customarily within the jurisdiction of the Union, including, by way of illustration but not limitation, the installation, operation, dismantling, and rigging of temporary and permanent sound equipment, lighting equipment, band gear, *projector screens, projection equipment, videotape equipment and any related audio/visual equipment*; temporary staging, properties, scenery, drops and drapery; fork-lift operation; wardrobe; the loading and unloading of trucks carrying equipment described in this Section 1.01 and various other duties incidental or related to the preparation or rendition of events, including the carrying of television lighting equipment and installation of such equipment

represented by International Alliance of Theatrical Stage Employees Local 13, and by failing and refusing to restore that bargaining unit to its historical scope and composition, thereby refusing to bargain collectively with that labor organization as the exclusive collective-bargaining representative of all employees in that appropriate historical bargaining unit, in violation of Section 8(a)(5) and (1) of the Act. However, no violation of the Act occurred as a result of the inadvertent omission of “wardrobe” from that unit in its initial description and proposal describing the collective-bargaining unit.

REMEDY

Having concluded that SFX Target Center Arena Management, LLC engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to recognize and, upon request, bargain with International Alliance of Theatrical Stage Employees Local 13, as the exclusive collective-bargaining representative of all employees in the appropriate historical bargaining unit described

above in conclusions of law and, should an understanding be reached, embody that understanding in a signed agreement.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record and pursuant to Section 10(c) of the Act, I issue the following recommended²

ORDER

The Respondent, SFX Target Center Arena Management, LLC, Minneapolis, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with International Alliance of Theatrical Stage Employees Local 13, as the exclusive collective-bargaining representative of all employees of SFX Target Center Arena Management, LLC in the appropriate bargaining unit set forth in paragraph 2(a) below, by eliminating "projector screens, projection equipment, videotape equipment and any related audio/visual equipment" from that unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) On request, bargain in good faith with International Alliance of Theatrical Stage Employees Local 13 as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit and, if an understanding is reached, embody the understanding in a signed agreement:

All employees of SFX Target Center Arena Management, LLC who perform the functions customarily within the jurisdiction of International Alliance of Theatrical Stage Employees Local 13, including, by way of illustration but not limitation, the installation, operation, dismantling and rigging of temporary and permanent sound equipment, lighting equipment, band gear, projector screens, projection equipment, videotape equipment and any related audio/visual equipment, temporary staging, properties, scenery, drops and drapery; fork-lift operation; wardrobe; the loading and unloading of trucks carrying equipment described in Section 1.01 of the 1997-2000 collective-bargaining contracts between the above-named Union and Ogden Entertainment Services, Inc. and various other duties incidental or related to the preparation or rendition of events, including the carrying of television lighting equipment and installation of such equipment.

(b) Within 21 days after service by the Region, post at its Minneapolis, Minnesota office and place of business, and at Target Center Arena, copies of the attached notice marked "Appendix."³ Copies of the notice on forms provided by the

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

Regional Director for Region 18, after being signed by its duly authorized representative, shall be posted by SFX Target Center Arena Management, LLC and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, it has gone out of business, or no longer has a contract for managing events staged and presented at Target Center Arena, SFX Target center Arena Management, LLC shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it at the Target Center Arena at any time since September 21, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps it has taken to comply.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

Dated, Washington, D.C., April 9, 2002

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with International Alliance of Theatrical Stage Employees Local 13 as the exclusive collective-bargaining representative of all employees in the appropriate collective-bargaining unit set forth below, by eliminating "projector screens, projection equipment, videotape equipment and any related audio/visual equipment" from that unit. The appropriate bargaining unit is:

All employees of SFX Target Center Arena Management, LLC who perform the functions customarily within the jurisdiction of International Alliance of Theatrical Stage Employees Local 13, including, by way of illustration but not limitation, the installation, operation, dismantling, and rigging of temporary and permanent sound

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

equipment, lighting equipment, band gear, projector screens, projection equipment, videotape equipment and any related audio/visual equipment, temporary staging, properties, scenery, drops and drapery; fork-lift operation; wardrobe; the loading and unloading of trucks carrying equipment described in Article I, Section 1.01 of the 1997-2000 collective-bargaining contract between that Union and Ogden Entertainment Services, Inc. and various other duties incidental or related to the preparation or rendition of events, including the carrying of television lighting equipment and installation of such equipment.

WE WILL NOT, in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by the Act.

WE WILL, on request, bargain collectively in good faith with International Alliance of Theatrical Stage Employees Local 13 in the appropriate collective-bargaining unit set forth above and, if an agreement is reached, embody that agreement in a written document and sign it.

SFX TARGET CENTER ARENA MANAGEMENT, LLC